

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

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In the Matter of)	
)	
Implementation of Sections 3(n))	
and 332 of the Communications Act)	GN Docket No. 93-252
)	
Regulatory Treatment of)	
Mobile Services)	

COMMENTS OF PAGING NETWORK, INC.

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SUMMARY

Paging Network, Inc. ("PageNet") herein comments on the Further Notice of Proposed Rule Making in the Commission's proceeding aimed at establishing a comparable regulatory environment for substantially similar commercial mobile radio services ("*Further Notice*"). As the largest and most rapidly expanding provider of private and common carrier paging services in the United States, PageNet is exceptionally well-positioned to comment on the Commission's proposals, which will so directly affect the manner in which it conducts its business. PageNet's facilities are predominately in the 900 MHz bands, and it has limited its comments accordingly.

PageNet agrees with the Commission's assertion that paging services offered on 929 MHz and 931 MHz paging frequencies are competing offerings and thus are substantially similar. In its pursuit of regulatory parity, PageNet strongly recommends that the Commission adopt an analytical framework under which each rule revision can be judged. This framework, PageNet believes, should be comprised of simple principles: regulatory minimalism, careful cost/benefit analysis, delay reduction, and quick delivery to the public of the highest quality service at the lowest possible price. Applying these principles, PageNet believes that comparable, though not necessarily identical, rules and procedures for the licensing of 929 and 931 MHz services can be identified and implemented.

Given the controlling analytical framework, PageNet believes the regulatory scheme must include the following essential components: (1) Applications should be frequency-specific and processed on a first-come, first-served basis with filing windows for competing applications scrupulously avoided in order to comply with the congressional mandate to minimize mutual exclusivity; (2) Licenses should be issued on a geographic rather than transmitter-by-transmitter basis, reflecting the development of wide-area, regional and nationwide paging services in response to market demand; and (3) To maximize service quality, licensees should be authorized to operate all paging base stations with maximum power of 3500 watts throughout their wide-ranging systems wherever it is possible to do so without causing co-channel interference to other provider's systems.

With Commission-defined market area licensing, the problem of co-channel interference is greatly reduced and limited primarily to the borders between such license areas. PageNet recommends adoption of mathematical formulas for determining height and power limits in border areas.

Market-area licensing also relates directly to the issue of construction deadlines and coverage requirements. PageNet submits that multi-phase construction periods are fully justified for large, multi-transmitter systems with a minimum of 30 transmitters and should be adopted for paging systems operating at 929 and 931 MHz. For local systems, PageNet advocates a 12-month construction

requirement, with completion of construction being defined in all instances as having facilities that are interconnected to the public switched telephone network and available for immediate service. To speed service to the public, PageNet also supports adoption of rules and implementation of procedures which permit at-risk construction of new facilities and pre-grant operation of proposed stations.

PageNet strongly opposes the Commission's proposal to retain a 30-day filing window (reduced from 60 days) for the filing of competing 931 MHz applications and the institution of such a window for 929 MHz filings, where one has never existed. The most serious deficiency of such a proposal is that it will threaten the expansion and natural growth of service by introducing the entire panoply of delay, cost and administrative burdens that accompany the processing of mutually exclusive applications. Since all of these pitfalls are avoidable under a first-come, first-served licensing scheme, PageNet steadfastly believes that first-come, first-served should be adopted and, consistent with the *Budget Act*, may be required.

Finally, PageNet finds no justification whatsoever for imposing any spectrum limitation on individual licensees. Especially in the highly competitive paging industry, there are no public benefits to be gained that the antitrust laws do not already address.

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To: The Commission

COMMENTS OF PAGING NETWORK, INC.

Paging Network, Inc. ("PageNet"), through its attorneys, hereby submits its comments in the above-captioned proceeding. ^{1/} This proceeding is among the most ambitious the Federal Communications Commission ("Commission") and the industry have undertaken in the mobile services area, given the scope and importance of the issues. The Commission is presented not just with the task of achieving regulatory parity where it is technically and operationally desirable to do so. It must also revise rules, in particular, those contained in Part 22, which are outdated and no longer address the Commission's and industry's licensing and operational needs but, rather, stand in the way. The Commission has done a remarkable job of coalescing the issues into a framework for discussion and in setting forth proposals. PageNet's Comments attempt to address these specific proposals,

^{1/} *Further Notice of Proposed Rulemaking, Regulatory Treatment of Mobile Services, GN Docket 93-252, FCC 94-100, released May 20, 1994 (hereinafter "Further Notice").*

focusing on those which it believes need refinement, revision, or, in some cases, abandonment.

Although PageNet serves more subscribers nationwide than any other paging carrier, its facilities are predominately in the 900 MHz bands, and it has limited its comments in this proceeding accordingly.

Statement of Interest

PageNet is the largest and most rapidly expanding paging company in the United States. It provides both private and common carrier services to over 3 million subscribers. PageNet files approximately 150 transmitter authorization applications per month to support its existing systems as well as expansion into new markets.

It is through PageNet's efforts in obtaining thousands of private and common carrier license grants from the Commission, building the systems licensed thereunder, and providing service to its subscriber base in accordance with Parts 22 and 90 of the Commission's rules, that it was able to achieve such phenomenal growth. PageNet's extensive experience with both private and common carrier regulations places it in an exceptionally good position to evaluate the Commission's proposals to modify both Parts 22 and 90, and to propose modifications of its own which it hopes will assist the Commission in achieving national regulatory parity.

PageNet has consistently and efficiently utilized its spectrum to satisfy consumer demand for state of the art paging services at the lowest possible cost, and intends to continue to do so. Nonetheless, its and other carrier's ability to provide expanded, wide-area services are increasingly limited by the speed with which the Commission is able to issue licenses.

In comments filed in related proceedings, PageNet has actively advocated positions on many of the issues raised in this *Further Notice* which, where relevant, are reiterated in these Comments. Specifically, PageNet has advocated a position on area licensing in CC Docket No. 92-115, the proceeding to rewrite Part 22 of the Commission's Rules ("*Part 22 Rewrite*"). ^{2/} Additionally, in response to the initial Notice of Proposed Rulemaking in this docket, PageNet expressed its views on the competitiveness of the marketplace in messaging services. PageNet has also participated in GEN. Docket No. 93-314, involving the implementation and adoption of rules for narrowband personal communications services ("PCS"), as well as the Part 90 refarming docket, PR Docket No. 92-234. ^{3/} PageNet urges the Commission to draw upon its filings in these proceedings to aid it in its

^{2/} Concurrent with the filing of these Comments, PageNet is filing comments in response to the Commission's *Further Notice of Proposed Rulemaking* released on May 20, 1994 in the *Part 22 Rewrite* Proceeding.

^{3/} In this proceeding, PageNet expressed its views on the distinct differences between one-way messaging and two-way SMR services.

consideration of how to improve the regulatory environment for CMRS providers.

I. INTRODUCTION

A. Analytical Framework

The *Further Notice* suggests amendment of numerous rules the Commission believes necessary to revise in order to achieve regulatory parity among similar CMRS's as mandated by the Omnibus Budget Reconciliation Act of 1993, Pub.L. No. 103-66, Tit. VI § 6002(b), 107 Stat. 312, 392 (1993) ["*Budget Act*"]. Instead of adopting revisions haphazardly or on an ad hoc basis, however, the Commission should first establish an analytical framework under which each rule revision should be judged. This analytical framework should be comprised of simple principles to which this Commission should steadfastly adhere, including:

- ° **minimize and simplify regulation and its associated burdens where possible; 4/**
- ° **determine whether the costs imposed on the Commission, the regulated industry, and the public outweigh any real benefit of regulation; 5/**

4/ See, FCC Chairman Reed E. Hundt, Address to the Harvard International Business Club, May 11, 1994, FCC Lexis 2125 ("... I strongly believe that we should hold steadfast to the principle that competition, not regulation, is our ultimate goal.")

5/ See, Testimony September 22, 1993, Senator Earnest F. Hollings Senate Commerce Committee Hundt confirmation ("I believe deregulation is not in itself an ultimate goal, but rather it is a means to an end. Promoting competition and eliminating excessive regulation are among the tools the FCC should use to pursue its mission, while continuing to monitor carefully the impact on consumers and American business of

Continued on following page

- ° adopt rules which minimize the potential for litigation or administrative or procedural delay; 6/
- ° speed new and innovative services to the public; 7/ and
- ° adopt rules which allow licensees to minimize costs and maximize efficiencies.

As PageNet's Comments at Section II, infra, demonstrate, 929 and 931 MHz paging services under Parts 90 and 22 are substantially similar services, and PageNet proposes that the Commission adopt similar or identical technical and operational rules, provided such rules maximize operational and technical efficiencies for both Part 22 and Part 90 operators. Power rules,

Continued from previous page

developments in the telecommunications markets."); see also, Testimony, May 19, 1994, of C. Boyden Gray, Chairman, Citizens for a Sound Economy to Senate Government Affairs Committee. ("Federal regulations have a substantial impact on the U.S. economy. They can affect consumers at home and U.S. competitiveness in the global marketplace. Consequently, the various federal agencies involved must be able to demonstrate a clear need for regulatory action and identify the most cost effective manner for achieving regulatory objectives.")

- 6/ This principle is consistent with Vice President Al Gore's "Reinventing Government" strategy. See "Creating a Government That Works Better & Costs Less," Report of the National Performance Review, Sept. 7, 1993. ("To ease the adverse effects of regulation on citizens, businesses, and the economy as a whole, the executive order will require an ongoing review of existing regulations. Agencies will identify regulations that are cumulative, obsolete or inconsistent, and where appropriate, eliminate or modify them.")
- 7/ See, Hundt Speech to Harvard, supra, note 4, ("Ultimately, sound decisions made today will speed up the introduction of new services and new competition in the future . . . [putting] licenses in the hands of those who will compete best -- not those who have the best lawyers or the most luck.")

for example, should be substantially similar or identical, provided the Commission relies on the rule which allows the operator the highest power level commensurate with the licensee's system, design, environmental and noninterference obligations. See, Comments infra, pp. 21-24.

As the Commission recognizes, however, it is under no obligation to adopt identical, or even similar regulations, unless it is technically and operationally practical to do so. *Further Notice* at ¶ 21. Thus, the Commission must assess whether the different historical bases of 929 and 931 MHz paging systems dictate different technical and/or licensing requirements. In particular where these technical and regulatory differences yield no competitive advantage of one service over another, there may be substantial reason to continue to apply different rules, in particular if rule modifications would burden existing licensees.

Where the Commission decides that parity is advisable, and thus a choice is between existing Part 90 and Part 22 rules, it should evaluate its options under the analytical framework set forth above. That is, it should adopt those rule sections, inter alia, which allow service to the public to be provided most expeditiously, with the least costs.

**B. Overview of 929 and 931 MHz Licensing Approach
Under PageNet's Analytical Framework**

Many of the specific issues on which the Commission requests comment, e.g., how to treat petitions to deny, directly or

indirectly involve the 929 and 931 MHz licensing and application processing procedures. The following paragraphs provide an overview of PageNet's licensing proposals for 931 MHz paging, with more detailed explanations contained in specific sections of these Comments.

PageNet believes that the first-come, first-served frequency-specific regulatory scheme, implemented on a market area basis, discussed below and described at length in PageNet's October 5, 1992 Comments in the *Part 22 Rewrite* proceeding is the best licensing process for 931 MHz paging services (Part 22) to promote the growth and development of paging services consistent with the Commission's public interest objectives. ^{8/}

The Commission specifically proposes to defer the issue of 929-930 MHz licensing (Part 90) for the time being, noting however that its "ultimate objective is to adopt consistent CMRS licensing procedures for all CMRS paging applicants." *Further Notice at* ¶ 57. PageNet believes that Part 22 and Part 90 license application schemes do not need to be consistent in order to satisfy the statutory objectives. There are both historical and continuing differences in the Part 22 and Part 90 services (e.g., shared frequency use, less congestion at 929-930 MHz) to justify continuation of different schemes. However, as discussed below,

^{8/} Part 90 private paging licensees are already granted on a first-come, first-served basis and should continue to use that procedure. Coupled with rules authorizing frequency coordination services, in this instance provided by NABER, first-come, first-served licensing processes have been instrumental in assuring the rapid growth and development of paging services at 929-930 MHz. See, e.g., § 90.495(f).

it would nonetheless clearly be in the public interest if the Part 22 frequency licensing procedures far more closely mirrored Part 90's procedures, to the extent permissible under Section 309 of the Act. 47 U.S.C. § 309. Were the Commission to proceed on that basis, it would establish regulatory parity in licensing in this proceeding.

The filing of applications on a first-come, first-served basis minimizes the regulatory burden on both the applicant and the Commission. Because it would be rare that two mutually exclusive applications would be filed on the same day, the applicant would less frequently have to submit to the auction processes and would not be required to dedicate the time and resources necessary even to intelligently participate in the auction. The Commission, and ultimately the public, would not have to bear the administrative costs of holding the auction. Neither would the applicant be required to have its application put on public notice for the purpose of soliciting competing applications, nor would it suffer the further delays both of the additional 30-day petition period for competing applications and of the auction process itself should the application ultimately become MXd. ^{9/} Here, clearly, the costs and other burdens imposed on the Commission, the applicant and the public (which ultimately

^{9/} Of course, the application would need to be put on public notice for petition to deny purpose. To the extent that the statutory 30-day notice period for petitions to deny is coincident with the period for filing competing applications that portion of the Commission's proposal might not inherently cause delay. However, it is not clear that the two periods would run concurrently.

bears the costs associated with obtaining the license) outweigh any perceived benefit to permitting competing applications to be filed.

The Commission should rely on outside frequency coordination services to process 931 MHz paging applications. Outside coordination services have greatly enhanced the speed at which private carrier paging services have been provided to the public. The discretion accorded outside coordinators to recommend alternative frequencies also facilitates efficient licensing and minimizes mutual exclusivity and the concomitant delays associated with it. Changing to a first-come, first-served frequency specific scheme would in fact shorten the licensing process for Part 22 931 MHz applicants by 4-6 months, in terms of time, an improvement of 400-600% over today's processes. 10/

Part 22 applicants wait perhaps an average of 6 or more months for the grant of uncontested applications, and even longer where a change in frequency proves necessary. The Part 90 first-come first-served, frequency specific procedures work with only minimal regulatory or applicant cost. 11/ There is virtually no

10/ Through a combination of the good efforts of NABER, and the Part 90 rules which allow preconstruction and conditional operation, a licensee can provide service to the public, quite literally, within days of filing its application. Even where NABER recommends the applicant select a different frequency than the applicant initially selected, the process is generally extended only by a few days.

11/ None of these delays (or costs) are associated with first-come, first-served processes, which may, in fact, be the licensing means most commonly used today, as the Part 90 frequencies have seen substantial licensing activity, while the Part 22 frequencies, given their relative maturity, have seen far less.

delay. The applicant is able to receive conditional authority to operate generally well within 30 days of filing its application with NABER, with concomitant prompt service to the public. These procedures should also be employed by 931 MHz licensees, with appropriate provision being made for public notice under Section 309 of the Act. ^{12/} Use of this procedure also comports with the Congressional mandate to adopt measures to avoid mutual exclusivity in its licensing procedures where feasible. See, 47 U.S.C. § 309(j)(6)(E).

Indeed, PageNet is aware of no public benefit to be attained by retention of a filing window for competing applications for 931 MHz paging services. The only entity potentially benefitted is the party filing a competing application. However, that party had the opportunity to file an application at any time prior to the initial applicant's, and chose not to do so. Certainly, the applicant whose business plan did include filing for a license, and providing service to the public, should not have its business plans stymied because a competing applicant sat back, unwilling to make a commitment to file an application or serve the public in the subject region until it was forced to do so by another.

As discussed below, PageNet proposes to combine the first-come, first-served procedure with frequency-specific licensing on a geographic basis such as Rand McNally Major Trading Areas™

^{12/} A rule comparable to § 90.159(b) to (e) should be available to all CMRS operators once the application has the 30-day public notice requirement satisfied. Section 309(f) of the Communications Act only applies to operation prior to expiration of the public notice period.

("MTAs") rather than on a transmitter by transmitter basis. This recognizes the fact that modern paging systems are developing on a regional, market wide basis and provides for an efficient, inexpensive and fast method of system expansion. ^{13/} By moving to a first-come, first-served, frequency specific application process, the incidence of truly mutually exclusive applications will be reduced with an application being mutually exclusive only if it is co-channel and is received by the Commission on the same day as the application with which it is in conflict. Only then should the Commission resort to competitive bidding. These procedures offer the most efficient and cost effective licensing mechanism with the best chance of providing service to the public upon demand. ^{14/}

II. PRIVATE CARRIER PAGING AND COMMON CARRIER PAGING SERVICES ARE "SUBSTANTIALLY SIMILAR" (§§ 10-19)

The Commission seeks comment on what is meant by "substantially similar" services. ^{15/} This initial issue is raised in order to permit the Commission to establish similar rules and

^{13/} See, PCP Exclusivity Order at ¶ 2.

^{14/} Many of the views expressed here are reiterated in PageNet's concurrently filed comments in response to the Commission's Further Notice in the Part 22 Rewrite proceeding.

^{15/} Further Notice at §§ 5, 10-19. In light of the Commission's statement that it proposes to "focus primarily on identifying and conforming differences in technical and operational rules in Part 90 and Part 22 . . ." *id.* at ¶ 22, PageNet has not proposed modifications to the rules for narrowband PCS. Although the Commission also seeks comment on the classification of Specialized Mobile Radio, 220-222 MHz Service and Business Radio, PageNet confines its comments to 900 MHz paging.

carry out its statutory directive for "substantially similar" common carrier services. ^{16/} The Commission correctly focuses on end user perception of whether different services meet substantially similar needs and demands. If specific services compete against each other to provide similar services to customers, the Commission concludes that those services should be subject to similar technical and operational rules. ^{17/} PageNet agrees with the Commission's conclusion that paging services offered on 929 MHz paging and 931 MHz frequencies are competing offerings and thus are substantially similar. ^{18/}

III. TECHNICAL AND OPERATIONAL RULES (§§ 20-24)

A. Technical Rules

1. Channel Assignment and Service Area (§§ 26-38)

The Commission has determined that the geographic separation criteria for common carrier and private carrier paging services are now identical, concluding that these provisions are

^{16/} Budget Act, at § 6002(d)(3).

^{17/} There clearly will be circumstances where technical and operational rules must continue to differ, even for the provision of substantially similar services. For example, cellular and PCS providers may offer paging services, but there does not appear to be any reason at this point to require those services' technical and operational rules to mirror the rules governing either 929 or 931 MHz paging services.

^{18/} For extensive support for that proposition, see Comments of PageNet on Notice of Proposed Rulemaking in GN Docket No. 93-252 at 4, PacTel at 9, Telocator at 15, Arch Communications Group at 9, Bell Atlantic at 15-16, Century Cellunet at 3-4, District of Columbia Public Service Commission at 8, GTE at 11, McCaw at 28-31, Motorola at Appendix A, Southwestern Bell at 17, and TDS at 16.

"comparable" for purposes of the Budget Act. However, the Commission acknowledges that additional conformance of certain of its rules respecting channel assignment and service area might be required and, in this regard, asks (1) whether Part 90 rules should define reliable service area similar to the Part 22 requirement that licensees have a "reliable service area" around each paging station for purposes of interference protection, and (2) whether to use "station defined service areas" in 900 MHz paging generally or base future licensing on Commission defined service areas.

As suggested in the *Further Notice*, the concept of "reliable service area" ("RSA") is directly related to concerns about interference protection. It is relevant in two contexts primarily. First, the RSA defines the area within which economic injury is assumed to occur when a competing co-channel system places an interfering signal in the area. Second, the RSA is used, in those states where state regulatory certification is required, to define the area within which such certification is requested of the Public Utility Commission in order to provide service to the public.

The classification tables contained in the rules for both Part 90 and Part 22 provide standard mileage separations designed to assure protection from co-channel systems in neighboring areas. In addition, as of August 10, 1994, state entry regulation of all commercial mobile services is preempted. As a result, it appears unnecessary to define a "reliable service area" concept in the context of PCP regulation.

2. Adoption of Commission Defined Market Area Licensing for Both Parts 22 and 90

As noted above, PageNet strongly supports adoption of market area licensing for all 929 and 931 MHz paging systems (929 MHz on the basis of states, and 931 MHz on the basis of MTAs) ^{19/} to allow greater flexibility in the design and implementation of paging systems. ^{20/} Adoption of a Commission defined market area licensing scheme for both 931 MHz and 929 MHz frequencies takes into account the realities of the marketplace. The needs of the public vary over a continuum for local service through wide area and regional coverage to complete nationwide paging. As the Commission has recognized, paging services have evolved to be wide area, regional and national in scope. See, PCP Exclusivity Order at ¶ 2. Local users demand solid coverage and intense transmitter density in urban areas, while regional users insist upon the broadest possible geographic coverage. It is most economically

^{19/} The Commission has used states to define the regions for 929 MHz frequencies, and MTAs to define geographic area for narrowband paging. PageNet prefers MTA boundaries as they appear to more approximately correspond to its existing and planned operations.

^{20/} Licensing paging on a transmitter-by-transmitter basis has created unproductive regulatory and transaction costs, and resulted in associated delays of bringing new service to the public. The typical six-month period required to process non-mutually exclusive applications for processing common carrier paging base station applications must be built into the scheduling and expansion planning by applicants. Where market needs change or a site is lost, these delays often pose additional difficulties for carriers. The sheer reduction in the number of applications to be generated by applicants and processed by the Commission represents a significant savings in cost and manpower requirements for both parties and ultimately provides benefits to the public in the form of quicker service at more economical cost.

efficient for this continuum of service to be provided to the public over a common infrastructure, since then the cost can be spread over a larger number of subscribers. A market area licensing scheme facilitates the development of such systems.

Adopting market area licensing for 929 and 931 MHz licenses would also increase opportunities for channel aggregation across all 900 MHz frequencies in a common service area, enabling providers to develop a common, multiple frequency infrastructure. This would reduce carrier costs, again facilitating expeditious service to the public at a lower price. In addition, a consistent licensing scheme will facilitate carriers' ability to structure management and sales for all services on a market basis, as the market demands now, making carriers better able to serve the needs of their individual customers.

The Commission, in its PCP Exclusivity Order, recognized repeatedly the virtues of wide-area coverage and the need to create an environment that encourages licensees to expand their coverage. PCP Exclusivity Order at ¶¶ 15 & 33. In its Petition for Reconsideration and Clarification, filed December 27, 1993, the Association for Private Paging Section of NABER sought reconsideration of the Commission's "contour protection" scheme to govern licensing and expansion of regional PCP systems. Rather, NABER recommended, and PageNet fully supports, licensing PCP exclusivity to qualified wide-area systems with state or multi-state borders.

Defining the geographic limits of regional and wide-area systems along state lines for 929 MHz frequencies, and along MTA borders for 931 MHz frequencies will create a stable and predictable environment by establishing defined areas within which licensees will have an exclusive right to provide service. Moreover, market area licensing provides licensees with an incentive to expand services throughout the area, and the build out requirements already associated with earned exclusivity assure such a build out. As a result, the public will be better and sooner served than by employing a more piecemeal approach such as mileage separation and contour protection methods.

3. Transition Period.

The transition from individual transmitter licensing to market area licensing under Part 22 could rely heavily on the earned exclusivity rules the Commission recently adopted for the 929 MHz paging services. ^{21/} There, the Commission granted exclusivity, subject to the rights of grandfathered licensees, to those licensees which satisfied build-out requirements within a specified time. For local exclusivity in the top 3 markets, an 18 contiguous transmitter requirement was imposed, with a 6 contiguous transmitter requirement imposed on other local systems operating in the top 100 markets. See, 47 C.F.R. § 90.495. Regional licensees are required to build out 70 transmitters in no more than 12 states, and nationwide licensees are required to build 300 transmitters nationwide, in order to earn exclusivity.

^{21/} See § 90.496 of the Rules.

To transition to the market area overlay for Part 22, PageNet suggests that existing applicants and licensees be given a fixed period of time (e.g., 18 months) in which to build out systems which meet some minimum transmitter requirement, ^{22/} without being subject to competing applications on those frequencies except from existing licensees within the MTA. Licensees who did not meet this requirement, or did not receive a waiver would not be awarded a market area license. ^{23/} Subsequent to the expiration of the build out time period, new applicants would be permitted to apply for unlicensed frequencies within specific MTAs, but only if they filed for, and committed to timely build the minimum number of transmitters required by incumbents.

Where there is more than one incumbent licensed in the MTA, those existing licensees would be entitled to expand their service areas based on current 70-mile protection criteria on a first-come, first-served basis, but no new applicants would be

^{22/} There are very few circumstances where one or a nominal number of transmitters could provide effective service to the public at 900 MHz, but the Commission should consider waivers in those comparatively rare circumstances. PageNet suggests that the minimum transmitter number required to establish MTA rights might be in the 25-30 range. Whatever the number, it must represent a substantial commitment on the part of the licensee to build a legitimate system.

^{23/} PageNet also suggests that the Commission prohibit the use of 1 watt transmitters, for purposes of satisfying its construction requirements. Use of 1 watt transmitters is undesirable because they are incapable of providing any meaningful service to the public due to their extremely limited service area and are at most a means of technically, but not substantially, complying with the Commission's construction requirements. See also discussion, infra, at pp. 25-27.

authorized unless the incumbents failed to satisfy their build out requirements. ^{24/}

In summary, defining service areas by geographic region (MTAs for 931 MHz and state or multi-state areas for 929 MHz systems) rather than contours would enable carriers to create seamless and integrated paging networks which allow subscribers to receive high quality service. At the same time, such services would be made available to the public as expeditiously as possible. PageNet believes that market area licensing is the best method through which to achieve these goals.

4. Co-channel Interference Protection (§§ 39-41)

As the Commission notes in the *Further Notice*, the issue of co-channel interference protection is intimately tied to the licensing scheme. Where service areas are station defined, *i.e.*, under a transmitter-by-transmitter licensing scheme, co-channel interference protection is dependent on defined mileage separations that assure that stations are sufficiently spaced so as not to interfere with one another. Under a Commission-defined market area licensing scheme, issues of co-channel interference are limited primarily to areas around the borders of the licensed

^{24/} Precedent for such a scheme exists in the Commission's cellular rules. See, §§ 22.6 and 22.902 of the Rules. Initial cellular systems were granted a five-year period during which the systems could be expanded within the MSAs and RSAs, free from the filing of competing applications. Subsequently, the Commission adopted rules for the acceptance, processing, and selection of applications for service to those areas into which systems had not expanded and which remained unserved. See, Amendment of Part 22 of the Commission's Rules to provide for filing and processing of applications for unserved areas in the cellular service, 6 FCC Rcd 6185, 6197 (1991).

territory. ^{25/} The Commission seeks comment on whether co-channel interference protection criteria as between Part 90 and Part 22 paging operations is comparable, and whether making it so would impose unnecessary burdens.

PageNet believes that the question of comparability in the standards for co-channel interference as it relates to 900 MHz paging must be addressed in the context of the overall licensing scheme. With Commission-defined market area licenses, the problem of co-channel interference is greatly reduced and limited primarily to the borders between such license areas. PageNet would support either of two approaches to protecting those areas. One approach would be to give licensees a greater number of station classes from which to choose, by adding classes of stations with protected service areas of less than 20 miles. This would permit a greater degree of flexibility in filling in stations along border areas. ^{26/} Alternatively, PageNet would support, and indeed prefer, the use of a mathematical formula such that at a given distance from the border, a licensee could determine the maximum allowable height and power that would

^{25/} Where the transition to a Commission-defined license area scheme results in two licensees within a single MTA, co-channel interference would continue to be a relevant concern as between those two entities with respect to expansion into unserved areas within MTAs.

^{26/} Paging providers frequently must meet subscriber demand for improved service at specific locations (such as hospitals, manufacturing plants, office buildings, etc.) or in areas where terrain features result in degraded service. Such locations may be located close to MTA boundaries. The ability to provide enhanced service through use of a facility with restricted service area is critical to meeting those market demands.